

# INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE  
ALCOHOL AND TOBACCO TAX DIVISION



WASHINGTON 25, D. C.

Industry Circular No. 61-34

July 25, 1961

## PROCEDURES WITH RESPECT TO UNDELIVERED BEER

Brewers and others concerned:

Purpose. This industry circular is issued to remind you of the procedures which must be followed with respect to undelivered beer.

Background. Under section 5054 of the Internal Revenue Code and regulations in 26 CFR Part 245, the tax on beer shall be determined at the time it is "removed for consumption or sale." Under the law and regulations, this includes all beer so removed except beer returned to the brewery on the same business day on which removed. The law and regulations also provide that tax on returned beer which is again removed for consumption or sale shall be determined and paid without respect to the tax which was determined at the time of prior removal of the beer for consumption or sale. Therefore, when undelivered beer returned to a brewery on any business day other than the business day of original removal is again removed for consumption or sale the brewer again becomes liable for tax at the time of its second (or subsequent) removal.

Beer returned to brewery on same business day as removed. Undelivered beer returned to a brewery on the same business day as it was removed therefrom must, on receipt at the brewery, be returned to stock, as provided in 26 CFR 245.155. The brewer's records must show the quantity of beer so returned and these records must be supported by credits against loading slips or by other suitable papers. The semi-monthly beer tax return will show for a particular business day only the quantity actually removed for consumption or sale on that day; that is, it will not reflect the beer removed from, but returned to, the brewery on that day. If the brewer is on a prepayment return system (rather than the semimonthly return system) he will have overpaid tax liability incurred on the day of removal by the amount of tax on the quantity of undelivered beer removed and return on that day. In such case, the brewer will take credit for the overpayment of tax in schedule C of his next prepayment tax return (Form 2034).

Beer returned on other than business day of removal. (a) Liability for tax. Any beer returned to a brewery on other than the business day it was removed from the brewery, whether it is delivered to a customer or remains on a truck until the truck has completed its run and returns to the brewery premises, is "beer removed for consumption

or sale" and as such was subject to tax at the time of removal. Therefore, whether the brewer is on a prepayment or semimonthly return system, tax liability was incurred on the day it was removed for consumption or sale and must be so reported on the beer tax return, Form 2034. When beer (including undelivered beer) returned to the brewery on other than the business day on which it was removed therefrom is again removed for consumption or sale the tax must again be determined and paid in the same manner. Failure on the part of a brewer to again pay the tax when the returned undelivered beer is later removed from the brewery for consumption or sale subjects him to penalty and interest and to possible criminal liability, as well as to liability for the tax on all beer so removed.

(b) Notice and claim procedure. Beer returned to a brewery on other than the business day it was removed therefrom may, however, be entitled to credit or refund of taxes under section 5056(a) of the Code as "beer removed from the market" if notice covering the beer is filed as provided in 26 CFR 245.161. Where a brewer has filed the required notice of the return to the brewery of beer removed from the market, a refund or credit of the tax on such beer may be obtained by filing (within six months after the date the beer was removed from the market) a claim, as provided in section 245.164 (refund) or 245.165 (credit).

(c) Credit adjustment on subsequent tax return. When a claim for credit is approved by the assistant regional commissioner (alcohol and tobacco tax) and the brewer is notified thereof, the tax credit should be reflected on the brewer's next tax return (or returns, if the credit due is greater than the tax liability shown on a single return).

Undelivered beer not returned to brewery. Where taxpaid undelivered beer is stored off the brewery premises, no additional tax liability will be incurred by reason of later sale or delivery thereof since beer held off the brewery premises in an undelivered status has not been returned to the brewery.

Inquiries. Inquiries concerning this industry circular should refer to its number and be addressed to your assistant regional commissioner (alcohol and tobacco tax).

  
Dwight E. Avis

Director, Alcohol and Tobacco Tax Division